

EXHIBIT 1

From: [Bartolomeo, Kai S.](#)
To: [Budner, Kevin R.](#); [Stern, William L.](#); [Bosman, Erin M.](#); [Park, Julie Y.](#)
Cc: [Cabraser, Elizabeth J.](#); [Selbin, Jonathan D.](#); ["Robert Klonoff"](#); ["Andrea Clisura"](#); [Blaisdell, Max](#)
Subject: RE: Dunn v. Fitbit, 16-cv-00036-JD
Date: Friday, October 27, 2017 5:32:30 AM
Attachments: [image001.gif](#)

Kevin,

Can you please send the authorities on which you rely to support your position that Mr. Dunn can represent all putative class members, as opposed to the opt-outs only?

Thanks in advance.

Kai

From: Budner, Kevin R. [<mailto:kbudner@lchb.com>]
Sent: Friday, October 20, 2017 12:29 PM
To: Stern, William L.; Bosman, Erin M.; Bartolomeo, Kai S.; Park, Julie Y.
Cc: Cabraser, Elizabeth J.; Selbin, Jonathan D.; 'Robert Klonoff'; 'Andrea Clisura'; Blaisdell, Max
Subject: RE: Dunn v. Fitbit, 16-cv-00036-JD

- External Email -

Will,

Thanks for the quick response. How about Thursday, 10/26, at 4pm?

Kevin R. Budner
Lieff Cabraser Heimann & Bernstein, LLP

From: Stern, William L. [<mailto:WStern@mofo.com>]
Sent: Friday, October 20, 2017 10:38 AM
To: Budner, Kevin R.; Bosman, Erin M.; Bartolomeo, Kai S.; Park, Julie Y.
Cc: Cabraser, Elizabeth J.; Selbin, Jonathan D.; 'Robert Klonoff'; 'Andrea Clisura'; Blaisdell, Max
Subject: RE: Dunn v. Fitbit, 16-cv-00036-JD

How about Monday, Wed. a.m., or Th p.m.?

From: Budner, Kevin R. [<mailto:kbudner@lchb.com>]
Sent: Thursday, October 19, 2017 2:39 PM
To: Stern, William L.; Bosman, Erin M.; Bartolomeo, Kai S.; Park, Julie Y.
Cc: Cabraser, Elizabeth J.; Selbin, Jonathan D.; 'Robert Klonoff'; 'Andrea Clisura'; Blaisdell, Max
Subject: Dunn v. Fitbit, 16-cv-00036-JD

- External Email -

Counsel,

Please find attached Plaintiff Dunn's First Set of Merits-Based Requests for Production of Documents and accompanying letter regarding scheduling. Hard copies are being delivered to your San Francisco office. We look forward to hearing from you soon.

Regards,



Kevin R. Budner
kbudner@lchb.com
t 415.956.1000
f 415.956.1008
Lieff Cabraser Heimann & Bernstein, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
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EXHIBIT 2

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Cc: [Cabraser, Elizabeth J.](#); [Selbin, Jonathan D.](#); ["Robert Klonoff"](#); ["Andrea Clisura"](#); [Blaisdell, Max](#)
Subject: RE: Dunn v. Fitbit, 16-cv-00036-JD
Date: Friday, October 27, 2017 11:24:52 AM
Attachments: [image001.gif](#)
[Dkt 60-Pltfs" Response to Brief on Application of Brennan v. Opus Bank a....pdf](#)

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Kai,

Thanks for reaching out. Recall that, per Judge Donato's direction, we addressed the "next steps" issues in our *Brennan* briefs filed more than a year ago. I've attached plaintiffs' brief for your convenience (see pages 13-15). I would also note that Judge Donato decided only that an arbitrator should decide whether the non-opt-out plaintiffs must proceed in arbitration. If those plaintiffs prevail on the "arbitrability" issue before an arbitrator, they will be back in court, and the issue of who Mr. Dunn can represent will be moot.

For that and other reasons, we believe the appropriate time to address the scope of the class is during the class certification briefing, and we think it premature to go into any more detail at this point. That said, if Fitbit wants to tee these issues up quickly, we are happy to discuss an accelerated schedule for class certification.

In the meantime, given the limited scope of our discovery requests, it is our position that Fitbit's responsive obligations are the same regardless of whether Mr. Dunn can represent a class of 200 or 2 million.

Regards,

Kevin R. Budner
Lief Cabraser Heimann & Bernstein, LLP

From: Bartolomeo, Kai S. [<mailto:KBartolomeo@mofo.com>]
Sent: Friday, October 27, 2017 5:33 AM
To: Budner, Kevin R.; Stern, William L.; Bosman, Erin M.; Park, Julie Y.
Cc: Cabraser, Elizabeth J.; Selbin, Jonathan D.; 'Robert Klonoff'; 'Andrea Clisura'; Blaisdell, Max
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